

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BILLY CEPERO,

Petitioner,

vs.

BRIAN WILLIAMS, et al.,

Respondents.

Case No. 2:16-cv-00204-RFB-NJK

ORDER

Petitioner, who is in the custody of the Nevada Department of Corrections, has submitted a petition for a writ of habeas corpus. He did not submit an application to proceed in forma pauperis, nor did he pay the filing fee of five dollars (\$5.00).

Petitioner also has filed a motion to open/refile new habeas petition (ECF No. 2). The court had dismissed an earlier action, Case No. 2:13-cv-01395-GMN-PAL, without prejudice to filing a new action. To the extent that petitioner is seeking permission to file a new action, none is needed, and the motion is moot.

Petitioner has filed a motion for appointment of counsel (ECF No. 3). Whenever the court determines that the interests of justice so require, counsel may be appointed to any financially eligible person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B). “[T]he district court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved.” Weygandt v. Look, 718 F.2d 952 (9th Cir. 1983). There is no constitutional right to counsel in federal habeas proceedings. McCleskey v. Zant, 499 U.S. 467, 495 (1991). The factors to consider are not separate from the underlying claims, but are intrinsically enmeshed with them. Weygandt, 718 F.2d

1 at 954. After reviewing the petition, the court determines that appointment of counsel is not
2 warranted.

3 **IT IS THEREFORE ORDERED** petitioner shall file an application for leave to proceed in
4 forma pauperis, accompanied by a signed financial certificate and a statement of his inmate account.
5 The clerk of the court shall send petitioner a blank application form for incarcerated litigants. In the
6 alternative, petitioner shall make the necessary arrangements to pay the filing fee of five dollars
7 (\$5.00), accompanied by a copy of this order. Petitioner shall have thirty (30) days from the date
8 that this order is entered to comply. Failure to comply will result in the dismissal of this action.

9 **IT IS FURTHER ORDERED** that petitioner's motion to open/refile new habeas petition
10 (ECF No. 2) is **DENIED** as moot.

11 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel (ECF
12 No. 3) is **DENIED** as moot.

13 **DATED:** September 26, 2016.



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16 RICHARD F. BOULWARE, II
United States District Judge
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